Postal Regulatory Commission Submitted 4/3/2023 11:05:20 AM Filing ID: 124822 Accepted 4/3/2023

BEFORE THE POSTAL REGULATORY COMMISSION WASHINGTON, D.C. 20268–0001

COMPETITIVE PRODUCT PRICES
PRIORITY MAIL EXPRESS, PRIORITY MAIL,
FIRST-CLASS PACKAGE SERVICE & PARCEL SELECT
PRIORITY MAIL EXPRESS, PRIORITY MAIL,
FIRST-CLASS PACKAGE SERVICE & PARCEL SELECT
CONTRACT 111

Docket No. MC2023-129

COMPETITIVE PRODUCT PRICES
PRIORITY MAIL EXPRESS, PRIORITY MAIL,
FIRST-CLASS PACKAGE SERVICE & PARCEL SELECT
CONTRACT 111 (MC2023–129)
NEGOTIATED SERVICE AGREEMENT

Docket No. CP2023-132

USPS REQUEST TO ADD PRIORITY MAIL EXPRESS, PRIORITY MAIL, FIRST-CLASS PACKAGE SERVICE & PARCEL SELECT CONTRACT 111 TO COMPETITIVE PRODUCT LIST AND NOTICE OF FILING MATERIALS UNDER SEAL (April 3, 2023)

In accordance with 39 U.S.C. § 3642, 39 C.F.R. § 3020.30 et seq., and 39 C.F.R. § 3015.5, the United States Postal Service requests that Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Contract 111 be added to the competitive product list within the Mail Classification Schedule. This is a competitive product not of general applicability within the meaning of 39 U.S.C. § 3632(b)(3).

Attachment A is a redacted version of the Governors' Decision, which includes the explanation and justification required by the Commission's rules. Attachment B is a redacted version of the contract. Attachment C shows the requested changes in the Mail Classification Schedule product list, with the additions underlined. Attachment D provides a statement of supporting justification, as required by 39 C.F.R. § 3020.32. Attachment E is a certification of compliance with 39 U.S.C. § 3633(a)(1) and (3).

Unredacted versions of the Governors' Decision, contract, and required cost and revenue data are being filed under seal. Attachment F provides an Application for Nonpublic Treatment of these materials.

As required by 39 U.S.C. § 3642(d)(1), this Request is being published in the Federal Register.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney:

Sean C. Robinson

475 L'Enfant Plaza, SW Washington, D.C. 20260-1137 (202) 268-8405 Sean.C.Robinson@usps.gov April 3, 2023

ATTACHMENT A TO REQUEST REDACTED GOVERNORS' DECISION

DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE ESTABLISHMENT OF PRICES AND CLASSIFICATIONS FOR DOMESTIC COMPETITIVE AGREEMENTS, OUTBOUND INTERNATIONAL COMPETITIVE AGREEMENTS, INBOUND INTERNATIONAL COMPETITIVE AGREEMENTS, AND OTHER NON-PUBLISHED COMPETITIVE RATES (GOVERNORS' DECISION NO. 19-1)

February 7, 2019

STATEMENT OF EXPLANATION AND JUSTIFICATION

Pursuant to our authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 ("PAEA"), we establish new prices not of general applicability for certain of the Postal Service's competitive service offerings, and such changes in classification as are necessary to implement the new prices.

This decision establishes new prices for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates. Domestic Competitive Agreements consist of negotiated service agreements with Postal Service customers for domestic services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Outbound International Competitive Agreements consist of negotiated service agreements with Postal Service customers for outbound international services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Inbound International Competitive Agreements consist of negotiated service agreements with foreign postal operators or other entities for inbound international services that are categorized as competitive in accordance with 39 U.S.C. § 3642(b)(1)-(2). Other Non-Published Competitive Rates consist of rates not of general applicability that are not embodied in contractual instruments.

With respect to any product within the above categories, management is hereby authorized to prepare any necessary product description, including text for inclusion in the Mail Classification Schedule, and to make all necessary regulatory filings with the Postal

Regulatory Commission.		

The Postal Accountability and Enhancement Act (PAEA) requires that prices for competitive products must cover each product's attributable costs, not result in subsidization by market dominant products, and enable all competitive products to contribute an appropriate share to the Postal Service's institutional costs. For agreements subject to this Decision, there are hereby established prices that will enable each agreement to cover at least 100 percent of the attributable costs for the relevant product and that conform in all other respects to 39 U.S.C. §§ 3632-3633 and 39 C.F.R. §§ 3015.5 and 3015.7. As discussed in the accompanying management analysis, the Chief Financial Officer (or his delegee(s)) shall certify that all cost inputs have been correctly identified for prices subject to this Decision and that all prices subject to this Decision conform to this Decision and to the requirements of the PAEA.

No agreement, grouping of functionally equivalent agreements, or other classification authorized pursuant to this Decision may go into effect unless it is submitted to the Postal Regulatory Commission with a notice that complies with 39 U.S.C. § 3632(b)(3). On a semi-annual basis, management shall furnish the Governors with a report on all non-published rate and classification initiatives, as specified in the accompanying Management Analysis. Not less than once each year, the Governors shall review the basis for this Decision and make such further determination as they may deem necessary. This Decision does not affect postal management's obligation to furnish to the Board of Governors information regarding any significant new program, policy, major modification, or initiative, or any other matter under 39 C.F.R. § 3.7(d), including where such a matter also falls within the scope of this Decision.

This Decision supersedes previous Governors' Decisions setting classifications and rates not of general applicability for competitive products; however, prices and classifications established under those Decisions may continue to be offered until the expiration of their terms, and contractual option periods and extension provisions that are included in the existing and future agreements can continue to be exercised.

ORDER

In accordance with the foregoing Decision of the Governors, the new prices and terms set forth herein for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates and the changes in classification necessary to implement those prices, are hereby approved and ordered into effect. An agreement or other nonpublished rate and classification initiative is authorized under this Decision only if the prices fall within this Decision and the certification process specified herein is followed. Prices and classification changes established pursuant to this Decision will take effect after filing with and completion of any necessary review by the Postal Regulatory Commission.

By The Governors:

Robert M. Duncan

Chairman, Board of Governors

Attachment A

Management Analysis of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates

This analysis concerns the inbound competitive prices and classifications in the Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates (collectively, "competitive instruments"). Competitive instruments are often negotiated with customers and foreign postal operators for better cost coverage, higher overall contribution, and improved service with respect to postal services classified as competitive. They may also arise from other sources, such as the Universal Postal Convention.

The cost coverage for each competitive agreement or grouping of functionally equivalent nstruments (collectively, each "product") will be
The cost coverage for a product equals

Each competitive instrument may have multiple price categories and negotiated components. Examples of such categories or components would be Priority Mail, Priority Mail Express, Parcel Return Service, Parcel Select, First-Class Package Service, First Class Package International Service, Commercial ePacket Service, Priority Mail International, Priority Mail Express International, International Priority Airmail, International Surface Air Lift, Inbound Parcel Post, Inbound Direct Entry, and Inbound EMS services. These or other categories may include other services that the relevant customer or foreign postal operator offers to its customers under differing terms, but that nevertheless are processed and delivered in the same manner within the United States Postal Service's network. Such instruments may also establish negotiated rates for services ancillary to such items and for customized competitive services developed for application solely in the context of the agreement.

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established by these formulas should not interfere with competitive products' ability as a whole to comply with 39 U.S.C. §3633(a)(3), which, as implemented by 39 C.F.R.§ 3015.7(c), requires competitive products to contribute a minimum percentage to the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products should arise from 39 U.S.C. §3633(a)(1).

The Postal Service shall submit a semi-annual report to the Governors. The report shall include information on the cost coverage for each agreement or initiative that has been executed under the authority of Governors' Decision 19-1. Agreements classified as non-published rates or rate ranges may be reported as a collective grouping; all other agreements or initiatives are to be reported separately. The report shall also include cost coverage information on any agreements and nonpublished initiatives established under previous numbered Governors' Decisions and Resolutions.

UNITED STATES POSTAL SERVICE OFFICE OF THE BOARD OF GOVERNORS

CERTIFICATION OF GOVERNORS' VOTE ON GOVERNORS' DECISION NO. 19-1

Consistent with 39 USC 3632(a), I hereby certify that the following Governors voted in favor of Governors' Decision No. 19-1:

Robert M. Duncan David C. Williams

Michael J. Elston

Secretary of the Board of Governors (A)

Date

7 February 2019

ATTACHMENT B TO REQUEST REDACTED SHIPPING SERVICES CONTRACT

SHIPPING SERVICES CONTRACT BETWEEN THE UNITED STATES POSTAL SERVICE

AND

REGARDING PRIORITY MAIL EXPRESS, PRIORITY MAIL, FIRST-CLASS PACKAGE SERVICE AND PARCEL SELECT

This Shipping Services Contract (as it may be amended, restated, supplemented or otherwise modified from time to time, and together with all attachments hereto, "Contract") is made by and between and a limited liability company organized and existing under the laws of and ("Customer"), and the United States Postal Service ("the Postal Service" or "USPS"), an independent establishment of the Executive Branch of the United States Government established by the Postal Reorganization Act, Public Law 91-375, with its principal office at 475 L'Enfant Plaza, SW, Washington, DC 20260. The Postal Service and Customer are referred to herein collectively as the "Parties" and each as a "Party".

WHEREAS, it is the intention of the Parties to enter into a Contract that will benefit the Postal Service, the postal system as a whole, and Customer, and that will comply with the requirements of Title 39 United States Code, as amended by the Postal Accountability and Enhancement Act of 2006.

NOW, THEREFORE, the Parties agree as follows:

I. Terms

The following terms apply as of the Effective Date defined in Section II:

A. Postal Laws and Standards

Except to the extent different terms or prices are specified in this Contract, applicable provisions of the Domestic Mail Manual (as may be regularly updated by the Postal Service and posted at http://pe.usps.com/text/dmm300/dmm300_landing.htm) and of other postal laws and standards, including USPS Publication 52 – *Hazardous, Restricted, and Perishable Mail*, apply to mail tendered under this Contract.

B. Applicable Products

This Contract applies to Contract Packages, defined in Section I.C, shipped using the following products with the following limitations:

1. Priority Mail Express weight-based packages that do not exceed

2. Priority Mail Express Flat Rate Envelopes ;
3. Priority Mail weight-based packages that do not exceed
4 Priority Mail public peckages that do not avoid
4. Priority Mail cubic packages that do not exceed
5. Priority Mail Flat Rate Envelopes
6. Priority Mail Flat Rate Boxes
7. Priority Mail Regional Rate Boxes
; 8. First-Class Package Service – Commercial packages that do not exceed
9. Parcel Select Ground weight-based packages, excluding packages, that
do not exceed ;2
10. Parcel Select Ground cubic packages that do not exceed
11. First-Class Package Service – Commercial weight-based packages, excluding
packages, that are greater than
12. First-Class Package Service cubic packages that do not exceed
Contract Packages
Contract Packages are defined herein as inbound and outbound packages of Applicable Products listed in Section I.B, excluding packages originating from and/or addressed to ZIP codes contained in Table A below, shipped by

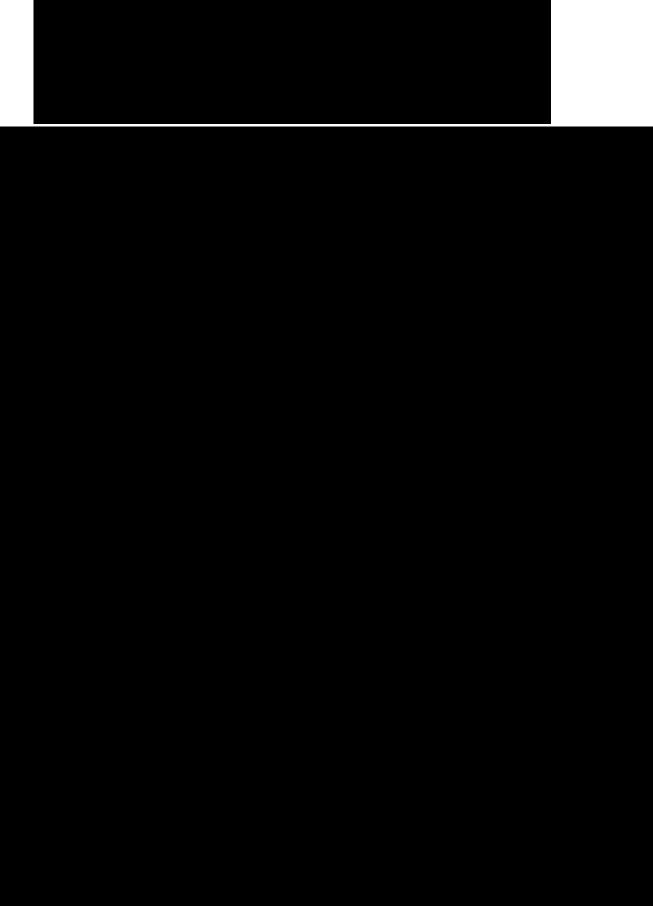
C.

defined in Section I.D, using Customer's (as defined in Section I.E) in whole or in part, and whether Customer's is accessed via a Customer

Ground Advantage) packages that do not exceed . This footnote will apply to Applicable Product 8. ² Beginning on July 9, 2023, Contract Packages will no longer include Parcel Select Ground weight-based or cubic packages. This footnote will apply to Applicable Products 9 and 10.

¹ Beginning on July 9, 2023, Contract Packages will include First-Class Package Service (which will be known as USPS

³ Beginning on July 9, 2023, Contract Packages will include First-Class Package Service (which will be known as <u>USPS</u> Ground Advantage) packages weighing as well as cubic packages that do not exceed . This footnote will apply to Applicable Products 11 and 12.



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G. Payment Methods/Reconciliation

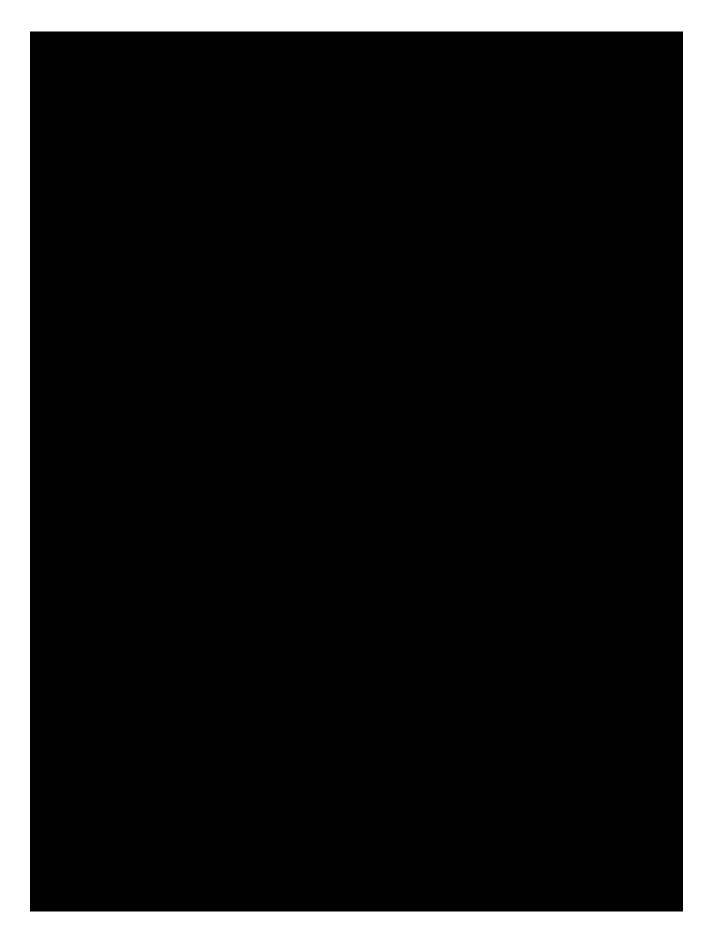
Customer will manifest Contract Packages as reasonably specified by the Postal Service and using approved payment methods such as permit numbers and mailer ids to ship such packages, and will use a manifest system acceptable to both Parties for payment of such packages. Only payment methods registered to the Customer, with the Customer's name, address, email, and phone number will be approved by the Postal Service. These approved payment methods must be the only payment methods used for Customer's Contract Packages. Contract pricing for any newly approved payment methods due to implementation of a new permit will be effective within fifteen (15) business days after the Parties mutually agree to add such payment method(s).

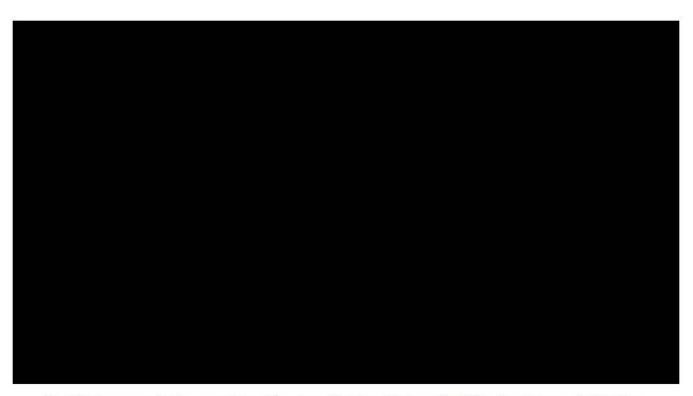
Customer will pay for Transportation Services (as defined in Addendum A) purchased through an at the rates in the at that time. Following each calendar month, Customer and the Postal Service will engage in a reconciliation process to determine (a) the accurate fees owed to the Postal Service by Customer, and (b) the amounts owed by the Postal Service to Customer due to . This reconciliation process will be mutually agreed to by the parties following execution of this Contract.





The Postal Service may provide Customer or with packaging for Priority Mail Express and Priority Mail Contract Packages that has been approved by the Postal Service and listed within the Postal Service catalog. The Postal Service will not provide Customer or with other customized or specialized packaging.





L. The terms and prices contained herein will take effect on the Effective Date as defined in Section II. Calendar and Contract Quarters refer to the periods as follow in Table B.

Table R

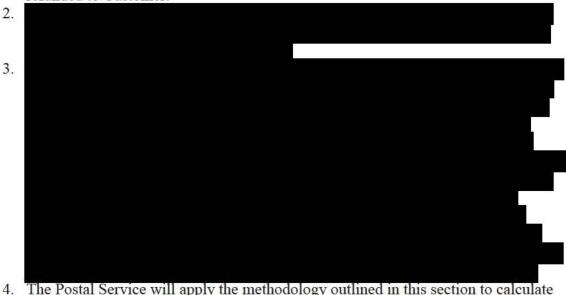
Table D		
Calendar Quarters		
Start of Period	End of Period	Contract Quarter
January 1st	March 31st	Q1
April 1st	June 30 th	Q2
July 1st	September 30 th	Q3
October 1st	December 31st	Q4

1. Tier threshold. As outlined in Table C below, the following quarterly average volumes must be met in order to achieve the applicable off pursuant to Section M and Table D below.



- M. Quarterly Volume Thresholds and Applicable Discount Tiers.
 - 1. Each of the Quarterly Volume ranges in Table C will be referred to as a "Quarterly Volume Threshold." "Quarterly Volume" will represent the number of Contract

Packages shipped during the applicable Calendar Quarter (regardless of whether such Contract Packages are successfully delivered). The Postal Service acknowledges and agrees that the value of any unused shipping labels will be refunded to Customer.



- 4. The Postal Service will apply the methodology outlined in this section to calculate the appropriate Discount pursuant to Table D below within thirty (30) calendar days of the conclusion of each Contract Quarter, except for Contract Quarters Q1 2023 and Q2 2023. The Postal Service will notify Customer within thirty (30) calendar days after the start of each Contract Quarter of the applicable tiered discount for any Contract Packages shipped, pursuant to Table D below, during that Contract Quarter, and the change in Discount will be retroactive to the beginning of that Contract Quarter. Any disputes regarding the application of the methodology used to calculate the appropriate Discount will be resolved via the reconciliation process described in Section I.G.
- 5. For example, if Customer's average Quarterly Volume during the two Calendar Quarters between July 1 and December 31, 2023 was Contract Packages, then Customer would be entitled to Discounts listed under Tier 2 in Table D for the Calendar Quarter running from January 1, 2024 to March 31, 2024.



⁴ Beginning on July 9, 2023, Parcel Select Ground will be eliminated. As of July 9, 2023, the Applicable Discount Tiers for the current Parcel Select Ground cubic (which will be known as USPS Ground Advantage cubic beginning on July 9, 2023) will continue to be the Applicable Discount Tiers as currently noted for Parcel Select Ground in Table D.

⁵ Beginning on July 9, 2023, First-Class Package Service will be expanded to include service up to

N. Price Adjustments

Throughout the term of this Contract, and any extension period following the Contract term, Customer will pay the most recently effective piscounts referenced in Section I.K and I.M. above for Contract Packages rounded up to the nearest whole cent.

O. Surcharges, Additional Fees, and Time-Limited Price Changes

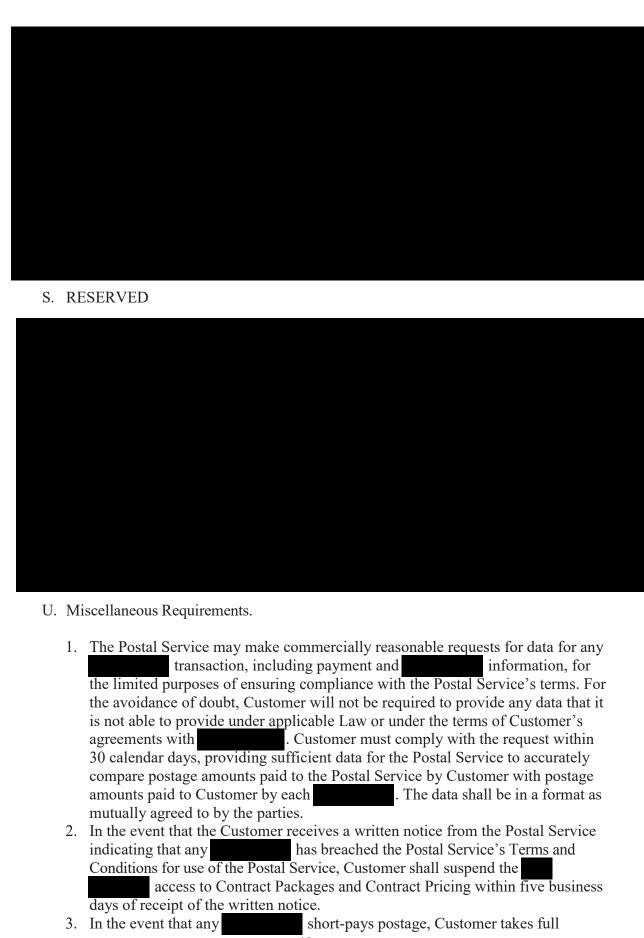
To the extent the Postal Service promulgates a surcharge, additional fee, or time-limited price change, pertinent to Applicable Products in Section I.B during the term of this Contract and with respect to all participants in the Connect eCommerce program, such surcharge, fee, or time-limited price change will be applied to the then applicable prices for those products under this Contract, subject to the same terms as such surcharge or fee is applied to the prices of general applicability for those products, respectively, as calculated by the Postal Service. The Postal Service reserves the right to forego an increase pursuant to this Section or increase by a lesser amount (but no less than zero), at its sole discretion.

P. Quarterly Business Reviews (QBRs)

The Parties shall, within thirty (30) calendar days after the conclusion of each full Contract Quarter in each Contract Year, jointly conduct a business review of Customer's Contract Packages and other performance expectations, including growth over same period last year, and compliance with the positioning requirements under Section I.R of this Contract. The Parties shall also review Customer's efforts to ensure end shipper compliance with Postal policies, regulations and procedures for shipping HAZMAT items as well as other packages shipped under this Contract, provided that the Postal Service will not have any audit or on-site inspection rights unless specifically agreed to by Customer. This business review shall be conducted either in person, by telecom, or by webinar. If either Party is unable to conduct a business review within thirty (30) calendar days after the conclusion of the above referenced Contract Quarters, it shall notify the other Party in writing (i.e., email or mail) of that fact and propose a date as soon as practicable thereafter.



Ground Advantage. The Applicable Discount Tiers for this service will be determined by the weight of the package and in accordance with the First-Class Package Service discounts in Table D.



- financial responsibility to pay the Postal Service the short-paid amount.
- 4. Customer shall provide the below-listed privacy notice to all when the Customer is collecting information on behalf of the Postal Service to administer financial transactions for purchasing postage and to meet postage system reporting requirements.

Privacy Act Statement: Your information will be used to facilitate the purchase of USPS postage and fulfill transactional reporting requirements for USPS postage systems. Collection is authorized by 39 U.S.C. 401, 403, and 404. Providing the information is voluntary, but if not provided, your transaction may not be processed. The Postal Service does not disclose your information to third parties without your consent, except to facilitate the transaction, to act on your behalf or request, or as legally required. This includes the following limited circumstances: to a congressional office on your behalf; to financial entities regarding financial transaction issues; to a US Postal Service (USPS) auditor; to entities, including law enforcement, as required by law or in legal proceedings; and to contractors and other entities aiding us to fulfill the service (service providers). For more information regarding our privacy policies, visit www.usps.com/privacypolicy.

II. Regulatory Review and Effective Date

This Contract is subject to approval by Postal Service senior management and/or the Governors of the Postal Service as well as by the Postal Regulatory Commission ("the Commission"). In accordance with Title 39 and the Commission's Rules of Practice and Procedure, the Postal Service will make required filings with the Commission. The "Effective Date" of this Contract shall be three (3) business days following the day on which the Commission issues all necessary regulatory approval. For the purposes of this Contract, business days are defined as Monday through Friday, excluding federal holidays and days on which the Postal Service Headquarters is administratively closed. The Parties agree that the intent of this Contract is to supersede and terminate the terms of that certain

terminate the terms of that certain

in all respects as of the Contract

Effective Date.

III. Expiration Date and Termination

A. Expiration

 This Contract shall expire on February 28, 2026, unless this Contract is (a) terminated by either Party pursuant to Section III.B; (b) renewed by mutual agreement in writing and subsequent approval by the Commission; (c) superseded by a subsequent contract between the Parties; or (d) terminated due to an order by the Commission or a court.

B. Termination

1.



2. Termination for Breach. If either Party commits a material breach of any term of this Contract and fails to cure such breach within thirty (30) calendar days after receiving written notice from the non-breaching Party describing such breach in reasonable detail, the non-breaching Party may immediately terminate this Contract in its entirety by providing written notice of such termination to the breaching party. If the Postal Service violates any of the Compliance Requirements, Customer will have the right to immediately terminate or suspend performance under this Contract. Notwithstanding anything to the contrary set forth in the Contract, either Party may pursue to the full extent available any and all remedies that may be available at law, equity or under the Contract.

C. Extension

If, at the conclusion of this Contract term, both Parties agree that preparation of a successor contract is active, this Contract may be extended by mutual agreement (email is acceptable) for up to two (2) ninety (90) calendar day periods, with official notice filed with the Commission at least seven (7) calendar days prior to the Contract's expiration date.

IV. Appeals

Customer may appeal a Postal Service decision regarding the calculation of prices, the amount of postage paid, or other implementation or operational issues under this Contract by submitting a written appeal via email, along with any and all supporting documentation, within thirty (30) calendar days of receipt of notification of the determination giving rise to the appeal to:

The appeal is forwarded to the Pricing and Classification Service Center (PCSC). The PCSC manager issues the final agency decision. Any decision that is not appealed as prescribed becomes the final agency decision.

V. Confidentiality

The parties will comply with the terms of the mutual nondisclosure agreement between the Postal Service and Customer entered into on as may be amended, superseded or otherwise modified from time to time ("NDA"). The terms and conditions of this Contract and any other information obtained from Customer in connection with this Contract that is identified as confidential or proprietary (including information relating to orders, identifying information of customers, information that an accessed or acquired services through the Customer the contents and recipients of packages, parcels and other cargo or transportation units, Customer's technology, customers, business plans, marketing activities and finances, and other Customer Information) is confidential information subject to the NDA. All such information will remain Customer's exclusive property, and the Postal Service will have no rights to use such information except as

expressly provided in this Contract and the NDA, and to fulfill its obligations in providing services to Customer acknowledges that as part of securing approval of this Contract, the Contract and supporting documentation will be filed with the Commission in a docketed proceeding. The Postal Service shall request from the Commission non-public treatment of information that the Postal Service deems to be eligible for protection from public disclosure when it files such material with the Commission, including Customer's identity, the terms of this Contract, and supporting data relating to postal costs, prices, and Customer's shipping profile. The Postal Service will redact such information from its public filing. Customer authorizes the Postal Service to determine the scope of information that must be made publicly available in the Commission's docketed proceeding. Customer further understands that any unredacted portion of this Contract or supporting information will be available on the Commission's public website, www.prc.gov. At the request of Customer, the Postal Service will notify Customer of the docket number of the Commission proceeding once assigned. Customer has the right, in accordance with the Commission's rules, to address its confidentiality concerns directly with the Commission. Customer agrees to treat as confidential and not disclose to third parties absent express written consent by the Postal Service any information related to this Contract that is determined by the Commission to be non-public.

VI. Amendments

This Contract shall not be amended except expressly, in writing, by authorized representatives of the Parties.

VII. Assignment

Neither Party may, or shall have the power to, assign its rights under the Contract or, delegate its obligations hereunder, without the prior consent of the other, except that Customer may assign this Contract to an affiliate or in connection with any internal reorganization or any similar transaction. Subject to the foregoing in this Section, this Contract will be binding upon, and inure to the benefit of, the parties and their respective permitted successors and assigns. Any Change in Control of the parties, which is not by reorganization or other internal change, shall constitute an assignment of this Contract, for which the other party's prior written consent is required, which consent will not be unreasonably withheld or delayed. For purposes of this Contract, a "Change in Control" means a sale of all or substantially all of the assets of a party, whether in a single transaction or a series of transactions, a merger, consolidation, or any other transaction or arrangement the effect of which is that 50% or more of the total voting power entitled to vote in the election of the party's board of directors is held by a person or persons other than the shareholders who, individually or as a group, held 50% or more of such voting power immediately prior to such event.

VIII. Waiver

Any waiver by a Party shall not constitute a waiver for any future occurrence. No waiver shall be valid unless set forth in writing executed by the Party waiving such provision.

IX. Representations, Warranties and Covenants

Customer hereby represents, warrants and covenants to the Postal Service as follows:

The execution and delivery by Customer of the Contract and the performance by the Customer of its obligations under the Contract (1) are within the Customer's power and authority; and (2) have been duly authorized. In addition, the individual signing the Contract on behalf of Customer is a duly authorized officer of the Customer with the power and authority to enter into the Contract on behalf of Customer.

X. Public Disclosures

Each Party hereby acknowledges and agrees that the form, substance, and timing of any press release regarding matters related to the Contract or the relationship between Customer and the Postal Service prepared and/or to be disclosed by it shall be subject to the prior review and written approval (email is acceptable) of the other Party. Each Party shall endeavor to respond to the other Party with written comments or written approval within five (5) business days of receipt of the proposed disclosure, but failure to approve in writing within that time frame shall be deemed disapproval.

XI. Additional Terms

The additional terms in Addendum A to this Contract will be fully incorporated into and made a part of this Contract.

XII. Sovereign Acts

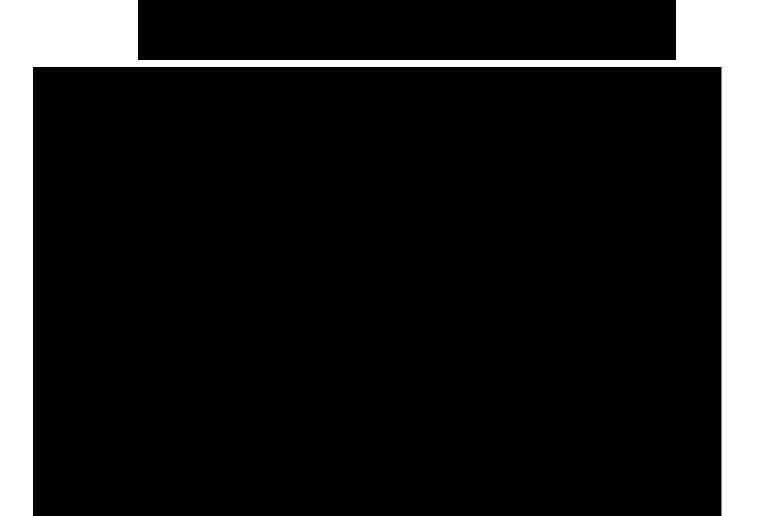
The Postal Service and Customer acknowledge and agree that the Contract is subject to any legislation that might be enacted by the Congress of the United States or regulations that might be promulgated by any agency, branch, or independent establishment of the United States Government. Notwithstanding anything to the contrary set forth herein, the Postal Service and Customer further acknowledge and agree that the Contract in no way waives the Postal Service's authority to act in its sovereign capacity and to promulgate and amend from time to time regulations and policies and that, pursuant to the sovereign acts doctrine, the Postal Service shall not be held liable for any acts performed in its sovereign capacity that may directly or indirectly affect the terms of the Contract. In the event that either Party is required by legislation enacted by the Congress of the United States or regulations that might be promulgated by any branch, agency, regulatory body, or independent establishment of the United States Government to terminate, or otherwise as a result of such action is unable to perform its obligations under the Contract, either Party may give the other Party a notice of termination of the Contract, which termination shall be effective immediately or on the effective date of such requirement, whichever is later. The Parties agree that in the event that the Contract is terminated as set forth in the preceding two sentences, or in the event that either Party is enjoined from proceeding with the Contract by any court of competent jurisdiction, such Party shall not be subject to any liability by reason of such termination or injunction. This section, however, shall not exempt the Postal Service from liability to Customer for any acts performed by the Postal Service (or by its Governors or Board of Governors). To the extent that any applicable law, regulation or policy adopted after the Effective Date expressly supersedes the terms of this Agreement, such law, regulation or policy shall control.

XIII. Notices

Any notice or other communication to be provided to a Party hereunder shall be in writing and shall be sent via certified mail (with return receipt requested) or by email to the individual (provided that the individual is still employed by the applicable Party) and at the

address listed below unless otherwise specified by the Party in writing. Notices shall be deemed given when received by the party (A) to the extent delivered personally, (B) upon receipt after sent by certified mail (return receipt requested) to the applicable address(es) set forth in the signature blocks below, (C) after being sent by a nationally recognized courier service and received by the applicable address(es) set forth in the signature blocks below, or (D) on the day acknowledged in writing (email or otherwise) by the recipient party when delivered by email, but only to the extent such email notice has been sent to an employee of the recipient party having knowledge of the matter contained in the notice (and, in the case of notice to Customer, with a copy to

and is conspicuously identified as a notice under this Contract. To the extent that a recipient party's notice address information is not set forth in the applicable Contract signature block, a notifying party may instead use contact information otherwise available on file.



XIV. Governing Law/Venue

This Contract is governed by the	Federal Laws of the United States.	If no federal laws apply, then
the laws of the	will apply, excluding its conflict	ts of law rules. The Postal
Service irrevocably submits to ex	xclusive personal jurisdiction and ve	enue in the federal courts in
, for a	ny dispute arising out of this Contra	ct and waives all objections to
jurisdiction and venue of such co	ourts.	

XV. Counterparts

The Contract may be executed in any number of counterparts, all of which taken together shall constitute one (1) single agreement between the Parties. A facsimile or other electronically or digitally transmitted copy of a signature on any counterpart shall be deemed to be an original signature.

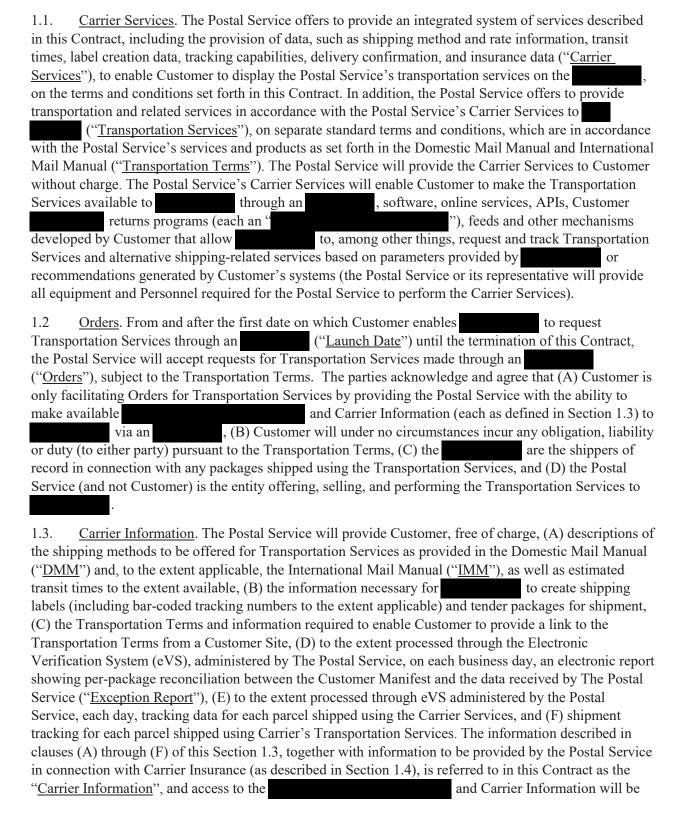
IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be duly executed as of the later date below:

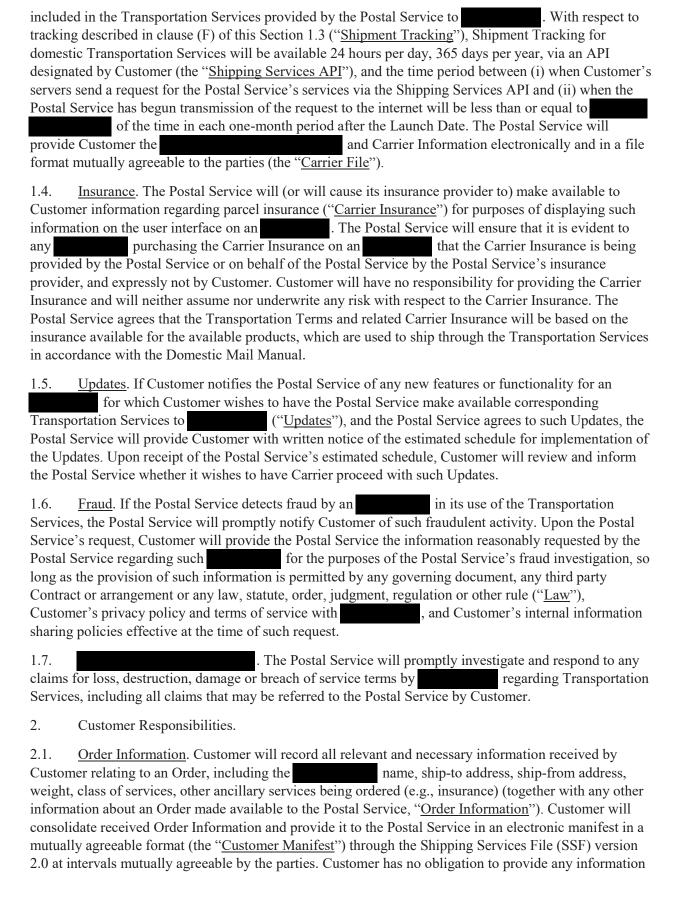
UNITED STATES POSTAL SERVICE
DocuSigned by:
Signed by: Subani Gambur
C464A267FBFB4E3
Printed Name: Shibani Gambhir
Title: Vice President Business Development
Date: March 7, 2023

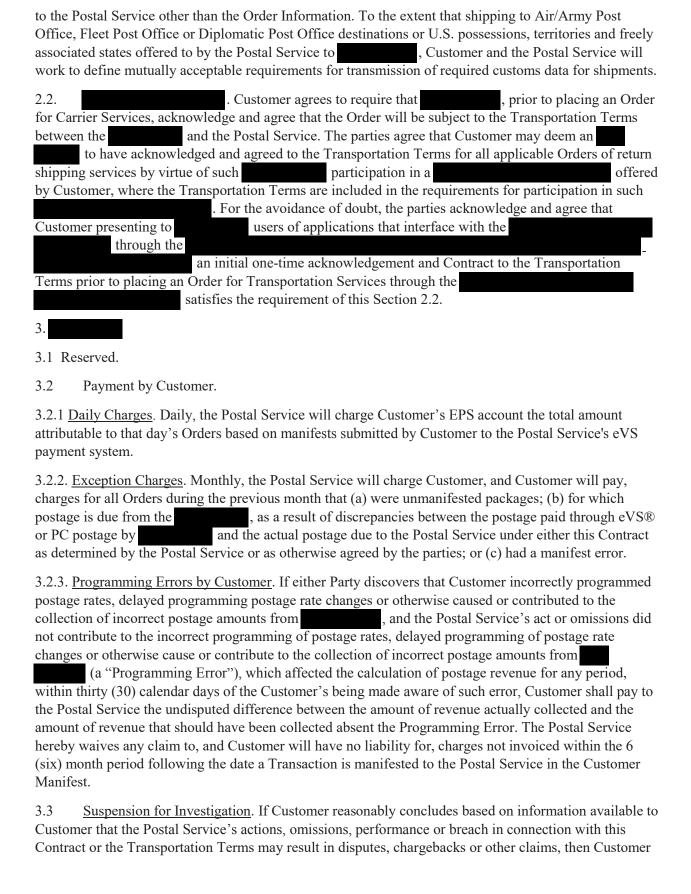


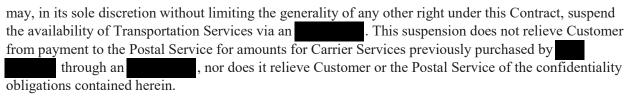
Addendum A

1. Carrier Services









- Records. Customer will keep true and accurate books and records relating to this Contract. The Postal Service will maintain true and accurate books and records relating to this Contract and the Carrier Services hereunder (collectively "Records") in accordance with generally accepted accounting standards. At Customer's request during the term of this Contract and for 3 years thereafter, the Postal Service will (X) enable Customer and any designee to conduct an invoicing, service and performance audit to determine if the Postal Service is meeting its obligations under this Contract, including providing access to and electronic copies of all relevant Records in a satisfactory mode and format that enables Customer and its designee to conduct such audit, and (Y) permit Customer and any designee to conduct an on-site inspection of the facilities, processes, systems, and working conditions applicable to the provision of the Carrier Services to determine if the Postal Service is in compliance with this Contract. The parties will use commercially reasonable efforts to resolve any disputes related to the reconciliation promptly.
- 3.5 Refunds. The Postal Service will process refunds for Transportation Services payments according to a process to be mutually agreed by the parties. Customer agrees to use its best effort to migrate to the eVS Automated Refund Process. Within 30 days following implementation of the Automated Refund Process Customer agrees to transmit the Customer Manifest for the applicable shipments within of label creation. During the period prior to Customer's migration to the eVS Automated Refund process, the Postal Service reserves the right to impose a administration fee on any refunds processed.
- 5. Representations and Warranties.
- 5.1. The Postal Service makes the following representations and warranties to Customer:
- (A) The Postal Service has all right, power and authority to enter into this Contract and the Transportation Terms and perform its obligations hereunder and thereunder. The Postal Service's entry into and performance of its obligations under this Contract and the Transportation Terms will not (with or without the passage of time or giving of notice or both) violate any Law, in each case by which the Postal Service is bound or to which the Postal Service or its assets is subject.
- (B) The Postal Service will use its best effort to ensure that the Carrier Information will be at all times accurate and complete.
- (C) The Carrier Services performed by or on behalf of the Postal Service and the Carrier Information and any reports, information, data or other materials provided by or on behalf of the Postal Service (including Customer's exercise of its rights under this Contract with respect to such Carrier Services, Carrier Information, Transportation Services and other materials) will not knowingly violate, misappropriate or infringe any third party's right of privacy, publicity, confidentiality or other Intellectual Property Right.
- (D) The Postal Service will use an acceptable industry standard of care in the protection of the goods or shipments of and the Postal Service will perform all of the Transportation Services in a competent and workmanlike manner in accordance with the level of professional care customarily observed by skilled professionals rendering similar services.

- (E) The Postal Service and its Personnel will: (i) comply with all applicable Laws in performing the Carrier Services and Transportation Services; (ii) hold and comply with all required licenses, permits and approvals; (iii) comply with the applicable anti-bribery provisions of Customer's Code of Business Conduct and Ethics, which is posted at on the Effective Date; (iv) comply with the Rules of Conduct for Postal Employees, as stated at 39 CFR Part 442 and the Standards of Ethical Conduct for Employees of the Executive Branch, as stated at 5 CFR Part 2635 and 5 CFR Part 7001; and (v) comply with the applicable provisions of the Customer Information Security Policy, which is attached as Annex 1 to this Addendum A (the requirements described in clauses (A) through (E) of this Section 5.1, the "Compliance Requirements").
- 5.2. Customer makes the following representations and warranties to Carrier:
- (A) Customer has the full corporate right, power and authority to enter into this Contract and perform its obligations hereunder, and when executed and delivered by it, this Contract will constitute its legal, valid and binding obligations, enforceable against it in accordance with its terms.
- (B) Customer will use its best efforts to ensure that the Order information contained in the Customer Manifest transmitted to Carrier accurately and completely reflects the information entered by with respect to each Order.
- (C) Customer will not violate or infringe any third party's rights in proprietary or confidential information in operating an example.
- 5.3. No Assurances. Carrier acknowledges and agrees that Customer is not making any covenant, representation or warranty and Carrier has no assurance of the amount of business Carrier can expect at any time under this Contract. Customer has provided Carrier historical volume, weight and product distribution information. Carrier acknowledges that any projections provided by Customer are speculative only and will not in any event be binding upon Customer or give rise to any liability on the part of Customer. Each party will be solely responsible for all costs and expenses it may incur in connection with the activities contemplated by this Contract, including the negotiation of this Contract and the costs of technical development and integration activities.
- DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS 5.4 CONTRACT, CUSTOMER DOES NOT MAKE, AND CARRIER HEREBY WAIVES AND DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES REGARDING THIS CONTRACT OR THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OR IMPLIED WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CUSTOMER SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY REGARDING (A) THE AMOUNT OF PROCEEDS OR OTHER REVENUES THAT MAY OCCUR DURING THE TERM AND (B) ANY ECONOMIC OR OTHER BENEFIT THAT CARRIER MIGHT OBTAIN THROUGH ITS PARTICIPATION IN OR PERFORMANCE UNDER THIS CONTRACT. BECAUSE CUSTOMER IS NEITHER THE BUYER NOR THE SELLER OF THE TRANSPORTATION SERVICES, IF A DISPUTE ARISES BETWEEN THE CARRIER AND THE PURSUANT TO THE TRANSPORTATION TERMS, THE CARRIER RELEASES **CUSTOMER** FROM CLAIMS,

DEMANDS AND DAMAGES (ACTUAL AND CONSEQUENTIAL) OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED, DISCLOSED AND UNDISCLOSED, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES.

6. Intellectual Property.

6.2. License Grants. Carrier grants to Customer a non-exclusive, worldwide, royalty-free license during the term of this Contract to (A) convert the and Carrier Information into digital electronic form; (B) excerpt, reformat, adapt or create other derivative works of the and Carrier Information ("Enhancements"); (C) use, copy, transmit, distribute, perform, and display the carrier Information and Enhancements for internal business purposes and on or in connection with an and Enhancements on the Customer Site or any associated websites (or similar online channel under the control of Customer that the control of Customer will use such Carrier that Customer in writing of a use of any Carrier Licensed Marks on the Customer And that Carrier believes to be a misuse or likely to mislead or cause confusion, and in the event of such notification, Customer will work with
Carrier in an attempt to resolve the situation. 6.3 <u>Customer Information</u> . Customer hereby grants Carrier a right to use any Customer Information (as defined in Annex 1 to Addendum A, " <u>Customer Information</u> ") that Customer makes available to Carrier under this Contract; provided that such use is solely for purpose of providing Carrier Services and Transportation Services to during the term of this Contract. Carrier will not disclose, distribute, transfer, rent, barter, trade or sell such Customer Information and will not develop lists of or aggregate the Customer Information or any part of it.
6.6 <u>Independent Development; Non-Exclusivity</u> . Nothing in this Contract is intended to restrict Customer's or Carrier's ability to independently acquire, license, develop, transmit or distribute for itself, or have others independently acquire, license, develop, transmit or distribute for it similar technology, information, data or services performing or having the same or similar functions, features or information as, with respect to Customer, the Carrier Services, and with respect to Carrier, Customer and in addition to, or in lieu of the Carrier Services, or Customer and in addition to, or in lieu of the Carrier Services, or Customer and in this Contract will be interpreted to preclude either party from entering into a similar Contract with a third party in business arrangements similar to, or competitive with, those described herein.
7. <u>Defense and Indemnity</u> . Carrier hereby releases and will hold harmless, and indemnify Customer, and the respective directors, officers, Personnel, successors and assigns of the foregoing from and against any loss, damage, settlement, cost, expense and any other liability (including reasonable attorneys' fees and costs) arising out of or resulting from any third party allegation or claim based on or relating to (A) any act or omission by Carrier or its Personnel, including any breach of this Contract or allegation or claim of negligence, strict liability or misconduct, (B) any allegation that the

Carrier Insurance violates any Law, including any allegation that Customer's or Carrier's or its providers' activities constitute impermissible selling of insurance pursuant to applicable Law, (C) any failure or alleged failure to accurately report any postal charges and mail class regulations or comply with any postage eligibility requirements, (D) any infringement or misappropriation of any Proprietary Right resulting from any Services and/or other materials provided by or on behalf of Carrier, or (E) Supplier's or its Personnel's breach of any of their confidentiality obligations under this Contract or the NDA ((A) through (E), collectively, "Carrier Claims"). However, the foregoing does not apply to the extent such Carrier Claim results from Customer's negligent or willful misconduct. Carrier's obligations under this section are independent of all of its other obligations under this Contract. Carrier will not consent to the entry of any judgment or enter into any settlement without Customer's prior written consent, which may not be unreasonably withheld. In the event of a Carrier Claim, upon notice from Customer, Carrier will advance defense expenses as determined in good faith in Customer's sole discretion.

Customer hereby releases and will defend, hold harmless, and indemnify Carrier, and the respective directors, officers, Personnel, successors and assigns of the foregoing from and against any loss, damage, settlement, cost, expense and any other liability (including reasonable attorneys' fees and costs) arising out of or resulting from any third party allegation or claim based on or relating to any actual or alleged breach of any term of this Contract by Customer ("Customer Claims"). However, the foregoing does not apply to the extent such Customer Claim results from Carrier's negligent or willful misconduct. Customer's duty to defend is independent of its duty to indemnify. Customer's obligations under this section are independent of all of its other obligations under this Contract. Customer will use counsel reasonably satisfactory to Carrier to defend each Customer Claim, and Carrier will cooperate (at Customer's expense) with Customer in the defense. Customer will not consent to the entry of any judgment or enter into any settlement without Carrier's prior written consent, which may not be unreasonably withheld.

LIMITATION OF LIABILITY. NO PARTY WILL BE LIABLE FOR SPECIAL, CONSEQUENTIAL, LOST OPPORTUNITIES OR PROFITS, INCIDENTAL OR PUNITIVE DAMAGES. IN ADDITION, CUSTOMER WILL NOT BE LIABLE FOR (X) DAMAGES ARISING OUT OF OR IN ANY WAY RELATED TO THIS CONTRACT (OTHER THAN THEN PERTAINING TO THE PAYMENT OBLIGATIONS HEREUNDER), WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR OTHER THEORY) OR OTHERWISE, FOR AN AGGREGATE AMOUNT IN EXCESS OF \$10,000, (Y) ANY CLAIMS MADE OR ACTIONS TAKEN OR CARRIER IN CONNECTION WITH AN BY OR ON BEHALF OF ANY APPLICATION, THE CARRIER SERVICE, CARRIER INSURANCE OR OTHERWISE, OR (Z) ANY FINES, PENALTIES, DAMAGES, REVENUE DEFICIENCY ASSESSMENTS OR OTHER FINANCIAL CLAIMS BY OR ON BEHALF OF A THIRD PARTY. CUSTOMER IS NOT A SHIPPER OR SHIPPER'S AGENT BY VIRTUE OF ANY ACT OR OMISSION RELATING TO AN APPLICATION. ANY LOSS OR DAMAGE TO ANY PACKAGE THAT OCCURS WHILE SUCH PACKAGE IS IN THE POSSESSION, CARE OR CONTROL OF CARRIER, , OR THEIR RESPECTIVE PERSONNEL WILL BE RESOLVED BETWEEN CARRIER IN ACCORDANCE WITH THE TRANSPORTATION TERMS THAT GOVERN THE RELATIONSHIP BETWEEN THE END-SHIPPER AND CARRIER.

9. Independent Contractors.

9.1. <u>Relationship of the Parties</u>. Carrier and Customer are independent contractors. Nothing in this Contract is to be construed as creating an agency, partnership, or joint venture relationship between the parties, and neither party will be entitled to act on behalf of or bind the other in any manner, except to the

extent expressly set forth in this Contract. Carrier hereby acknowledges that Transportation Terms effected and Orders received through an are directly affirmed as binding upon Carrier, notwithstanding that Customer is not authorized as agent to enter into contracts with on behalf of Carrier.

- 9.2. <u>Carrier's Personnel</u>. All Personnel furnished by Carrier to provide Carrier Services are employees, agents or subcontractors of Carrier and are not employees, agents or subcontractors of Customer. "<u>Personnel</u>" means the employees, contractors, subcontractors, agents and representatives of a person or entity. If Customer reasonably objects in writing to the Postal Service's use of a subcontractor with respect to the Carrier Services, the Postal Service will evaluate in its sole discretion whether to cease using such subcontractor to perform the Carrier Services within 30 days after receipt of such notice from Customer.
- 9.3. Subcontractors. Notwithstanding the existence or terms of any subcontract, the Postal Service will remain responsible for the full performance of the Carrier Services in accordance with the terms and conditions of this Contract. The terms and conditions of this Contract are binding upon the Postal Service, its affiliates and their respective employees, contractors, subcontractors, agents and representatives. The Postal Service will (A) ensure that such entities and individuals comply with this Contract (B) ensure that such entities and individuals are subject to an Contract obligating them to protect Customer's Confidential Information (as defined in the NDA) and the Customer Information in a manner that is at least as protective of Customer's Confidential Information and the Customer Information as in the NDA, and (C) be responsible for all acts, omissions, negligence and misconduct of such entities and individuals. The Postal Service will also ensure that all subcontractors effectively and irrevocably waive any lien upon (or other right with respect to) the packages, parcels and other cargo or transportation units transported under the Transportation Services, regardless of whether such subcontractor would otherwise be entitled to such lien or other rights under contract or applicable law, and waive any claim (including for amounts owed for delivery services) against Customer, any and any shipment recipient.
- Taxes. Customer will collect on behalf of the Postal Service an estimate of any applicable state or local sales or use tax on Transportation Services charged to . The Postal Service may charge and Customer will pay applicable national, state or local sales or use taxes or value added taxes that the Postal Service is legally obligated to charge ("Taxes"), provided that those Taxes are stated on the original invoice that the Postal Service provides to Customer and the Postal Service's invoices state those Taxes separately and meet the appropriate tax requirements for a valid tax invoice. Customer may provide the Postal Service an exemption certificate acceptable to the relevant taxing authority, in which case the Postal Service will not collect the Taxes covered by such certificate. The Postal Service will be responsible for all other applicable taxes (including interest and penalties) or fees, if any, arising from transactions and the documentation of transactions under this Contract. Customer may deduct or withhold any taxes that Customer determines it is obligated to withhold from any amounts payable to the Postal Service under this Contract, and payment to the Postal Service as reduced by such deductions or withholdings will constitute full payment and settlement to the Postal Service of all amounts payable to the Postal Service under this Contract. Throughout the term of this Contract, the Postal Service will provide Customer with any forms, documents, or certifications as may be required for Customer to satisfy any information reporting or withholding tax obligations with respect to any payments under this Contract.

11. General.

- 11.1. <u>Amendment and Waiver</u>. Except as set forth in this Section, this Contract may not be amended, suspended, superseded or otherwise modified except by a written instrument, expressly identifying the modifications made and signed by the authorized representative of each of the parties. No waiver will be effective under this Contract except by a written instrument, expressly identifying the rights waived and signed by the authorized representative of each person or entity to be bound thereby. A waiver regarding any breach or default will not constitute a waiver with respect to any different or subsequent default unless expressly provided in such waiver instrument. Without limiting the generality of the foregoing, a party will not be deemed to modify any term or waive any right or remedy under this Contract by failing to insist on compliance with any of the terms of this Contract or by failing in one or more instances to exercise any right hereunder.
- 11.2. Remedies. The rights and remedies of the parties under this Contract are cumulative, and either party may enforce any of its rights or remedies under this Contract or other rights and remedies available to it at law or in equity. The Postal Service will, at no cost to Customer, promptly and satisfactorily correct any Services provided in a manner not in conformity with the requirements of this Contract or any other noncompliance with this Contract noted in connection with any review or inspection. Similarly, Customer will, at no cost to the Postal Service, promptly and satisfactorily correct any information about the Postal Service provided in a manner not in conformity in requirements with this Contract. Any amount due and payable from one party to another under this Contract may be deducted from or set off against any other amounts payable to such party from such other party.
- Construction. Each work order, addendum, exhibit and schedule associated with this Contract is hereby incorporated by reference, as if fully set forth herein, and each reference to an exhibit in this Contract will include all subsections or portions of such exhibit. If any provision of this Contract is determined to be unenforceable in any jurisdiction, the parties intend that this Contract be enforced in such jurisdiction as if the unenforceable provisions were not present and that any partially valid and enforceable provisions be enforced in such jurisdiction to the extent that they are enforceable, and further agree to substitute for the invalid provision a valid provision (with respect to such jurisdiction) which most closely approximates the intent and economic effect of the invalid provisions. The parties intend that each covenant, representation and warranty in this Contract will have independent significance, and no breach or violation will be mitigated, and no right or obligation will be modified, foreclosed or waived, by the existence of any other provision relating to the same subject matter, regardless of the relative levels of specificity. The section headings of this Contract are for convenience only and have no interpretive value. References to currency or "\$" in this Contract refer to the United States of America dollar unless otherwise expressly noted. The use of the word "including" and similar terms in this Contract will be construed without limitation. References in this Contract to "business days" will refer to each day other than a Saturday, Sunday, federal holiday, or a day that commercial banking institutions in , are authorized or required by law to remain closed. Each party and its counsel has reviewed and jointly participated in the establishment of this Contract. No rule of strict construction or presumption that ambiguities will be construed against any drafter will apply, and no presumptions will be made or

and jointly participated in the establishment of this Contract. No rule of strict construction or presumption that ambiguities will be construed against any drafter will apply, and no presumptions will be made or inferences drawn because of the final inclusion of a term not contained in a prior draft or the final deletion of a term contained in a prior draft. Except as expressly set forth in this Contract, the terms and conditions of this Contract will apply solely for the benefit of the parties hereto (including their permitted successors and assigns), and nothing under this Contract will give any other third party any benefit, right or remedy hereunder.

11.4. <u>Execution</u>. Each Party represents that it has caused this Contract to be executed on its behalf as of the date written below by a representative empowered to bind that Party with respect to the undertakings and obligations contained herein. The Effective Date of this Contract is the later of the two execution dates shown below.

Annex 1 to Addendum A

MAIL CLASSIFICATION SCHEDULE

PART B—COMPETITIVE PRODUCTS

2000 COMPETITIVE PRODUCT LIST

NEGOTIATED SERVICE AGREEMENTS

Domestic

Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 111

Statement of Supporting Justification

- I, Shibani S. Gambhir, Vice President, Business Development, am sponsoring this request that the Commission add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 111 to the list of competitive products. This statement supports the Postal Service's request by providing the information required by each applicable subsection of 39 C.F.R. § 3020.32. I attest to the accuracy of the information contained herein.
- (a) Demonstrate why the change is in accordance with the policies and applicable criteria of the Act.

As demonstrated below, the change complies with the applicable statutory provisions.

(b) Explain why, as to the market dominant products, the change is not inconsistent with each requirement of 39 U.S.C.§ 3622(d), and that it advances the objectives of 39 U.S. C.§ 3622(b), taking into account the factors of 39 U.S. C.§ 3622(c).

Not applicable. The Postal Service is proposing that this Priority Mail Express,

Priority Mail, First-Class Package Service, and Parcel Select contract be added to the competitive products list.

(c) Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633.

The service to be provided under the contract will cover its attributable costs and make a positive contribution to coverage of institutional costs. The contract will increase contribution toward the requisite 8.8 percent of the Postal Service's total institutional costs. Accordingly, no issue of subsidization of competitive products by market dominant products arises (39 U.S.C. § 3633(a)(1)).

(d) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can without risk of losing a significant level of business to other firms offering similar products: (1) set the price of such product substantially above costs, (2) raise prices significantly; (3) decrease quality; or (4) decrease output.

The contract sets specific terms and conditions for providing Priority Mail

Express, Priority Mail, First-Class Package Service, and Parcel Select to the customer.

Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select are

provided in a highly competitive market. The Postal Service is unable to set prices

substantially above costs, raise prices significantly, decrease quality, or decrease

output, without losing this business to private competitors in the expedited shipping

market.

In negotiating this contract, the Postal Service's bargaining position was constrained by the existence of other providers of services similar to the Postal Service's. As such, the market precludes the Postal Service from taking unilateral action to increase prices or decrease service. As with Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select in general, the Postal Service may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. The market does not allow the Postal Service to raise prices or offer prices substantially above costs; rather, the contract is premised on prices and terms that provide sufficient incentive for the customer to ship with the Postal Service rather than a competitor.

(e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 189 U.S.C. 1696, subject to the exceptions set forth in 39 U.S.C. 601.

I am advised that merchandise sent by Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select and this contract are not covered by these provisions. See part (d) above.

(f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product.

See part (d) above. Expedited shipping, similar to Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select is widely available from well-known and successful private firms at both published and contract prices.

(g) Provide any available information of the views of those who use the product on the appropriateness of the proposed modification.

Having entered into this contract with the Postal Service, the customer supports the addition of the contract to the product list so that the contractual terms can be effectuated.

(h) Provide a description of the likely impact of the proposed modification on small business concerns.

The market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. Large shipping companies serve this market. The Postal Service is unaware of any small business concerns that could offer comparable service for this customer.

(i) Include such other information, data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.

Additional details regarding the terms of the contract have been provided to the Commission under seal due to the sensitivity of the contract to both the customer and the Postal Service.

Certification of Prices for Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 111

I, Lisa H. Arcari, Director, Domestic Package Pricing, Finance Department, am familiar with the prices and terms for Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 111. The prices and terms contained in this Contract were established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates (Governors' Decision No. 19-1).

I hereby certify, based on the financial analysis provided herewith, that the prices are in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). They are expected to cover attributable costs. There should therefore be no subsidization of competitive products by market dominant products. This contract should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.

Digitally signed by Lisa Arcari Date: 2023.04.03 09:35:27 -04'00'

Lisa H. Arcari

APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. Part 3007, the Postal Service hereby applies for non-public treatment of: the unredacted Governors' Decision; the unredacted shipping services contract; and the supporting documents establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3015.5. The Postal Service hereby furnishes the justification required for this application by each subsection of 39 C.F.R. § 3007.201(b), as enumerated below.

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.

(1) The rationale for claiming that the materials are non-public, including the specific statutory provision(s) supporting the claim, and an explanation justifying application of the provision(s) to the materials.

The materials designated as non-public consist of information of a commercial nature, which under good business practice would not be publicly disclosed. In the Postal Service's opinion, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3), (b)(4).¹ Because the portions of the materials which the Postal Service is applying to file only under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, are not required to

¹ In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C.§ 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(4). The Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A).² Because the portions of materials filed non-publicly in this docket fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

(2) A statement of whether the submitter, any person other than the submitter, or both have a proprietary interest in the information contained within the non-public materials, and the identification(s) specified in paragraphs (b)(2)(i) through (iii) of this section (whichever is applicable). For purposes of this paragraph, identification means the name, phone number, and email address of an individual.

The Postal Service believes that the customer with whom the contract is made has a proprietary interest in the non-public materials and that customer-identifying information is sensitive and should be withheld from public disclosure. Therefore, rather than identifying the customer, the Postal Service gives notice that it has already informed the customer, in compliance with 39 C.F.R. § 3007.200(b), of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. The Postal Service employee responsible for providing notice to the third party with proprietary interest in the materials filed in this docket is Elizabeth A. Reed, Attorney, 475 L'Enfant Plaza SW, Washington, D.C. 20260-1137, whose email address is Elizabeth.A.Reed@usps.gov and whose telephone number is 202-268-3179.

(3) A description of the information contained within the materials claimed to be non-public in a manner that, without revealing the information at issue,

² The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

would allow the Commission to thoroughly evaluate the basis for the claim that the information contained within the materials are non-public.

The Governors' Decision establishing Domestic Competitive contracts, including those for Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select, the contract identifying the customer and containing the prices, terms, and conditions of the contract, and the financial workpapers supporting the contract are being filed under seal in this docket. Redacted copies of the Governors' Decision and the contract are being filed publicly in this docket. The Postal Service maintains that the redacted portions of the Governors' Decision, the contract, name of the customer and related financial information should remain confidential.

With regard to the contract, the redactions are of the name, address, signature block, and other information that could identify the customer; such identifying information of a postal patron may be withheld from mandatory public disclosure by virtue of 39 U.S.C. § 504(g)(1) and 39 U.S.C. § 410(c). Also redacted are the negotiated price structure and the terms directly related to implementation of the price structure.

The redacted portions of the Governors' Decision and attached Analysis protect the costs authorizing Domestic Competitive contracts, and the analysis of those costs.

The redactions applied to the financial work papers protect commercially sensitive information such as underlying costs and assumptions, pricing formulas, information relevant to the mailing profile of the customer, and cost coverage projections. To the extent practicable, the Postal Service has limited its redactions in the workpapers to the actual information it determined to be exempt from disclosure under 5 U.S.C. § 552(b). However, in a limited number of cases, narrative passages or notes were redacted in their entirety due to the practical difficulties of redacting particular words or numbers within the text as presented in a spreadsheet format.

(4) Particular identification of the nature and extent of the harm alleged and the likelihood of each harm alleged to result from disclosure.

If the redacted information were to be disclosed publicly, the Postal Service considers that it is quite likely that it and the customer would suffer commercial harm.

The information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices.

Revealing this information would provide a competitive advantage to competitors of the Postal Service and of the customer. The Postal Service considers that it is highly probable that if this information were made public, such entities would take immediate advantage of it and there is a substantial risk that the Postal Service and the customer would lose business as a result. Additionally, other postal customers could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service and other businesses could use the information to their advantage in negotiating with the customer. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

Finally, the financial work papers include specific information such as costs, negotiated prices and pricing structure, assumptions used in developing costs and prices, mailer profile information, and projections of variables. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's and the customer's competitors would likely take great advantage of this information. Unlike its competitors, the Postal Service is required to meet the standards of 39 U.S.C. § 3633 with each negotiated service agreement that it asks to have added to the competitive products list. Competitors are not so constrained and could use the redacted information to their advantage in gaining customers. The formulas shown in the spreadsheets in their native format provide additional sensitive information. Revealing the Postal Service's profit margin information could also be used by the customer to attempt to renegotiate its own prices.

(5) At least one specific hypothetical, illustrative example of each alleged harm.

Identified harm: Revealing customer identifying information would enable competitors to target the customers for sales and marketing purposes.

Hypothetical: The identity of the customer in this contract is revealed to the public. A competitor's sales representatives contact the Postal Service's customer and

offer the customer lower prices or other incentives, taking away the business anticipated by the Postal Service.

Identified harm: Public disclosure of negotiated terms of the agreement could be used by competitors and potential customers to the detriment of the Postal Service and its customer.

Hypothetical: A competitor obtains a copy of the unredacted version of Customer A's contract and workpapers to the detriment of the Postal Service's customer. Company B discovers proprietary business strategies and changes its business practices to minimize differentiation, identify their key customer base and cause defection of Customer A's customers. Customer A cancels the contract and withdraws their business from the Postal Service. Other companies would then refuse to share critical details of their business or to participate in negotiated prices with the Postal Service, harming the Postal Service's ability to compete in the marketplace for additional volume and revenue.

Hypothetical: The competitor could leverage multiple services to offer deeper discounts than provided by the Postal Service's contract as a loss leader, using profits on other products profits to make up for the temporary loss.

Identified harm: Public disclosure of the price formula, underlying cost structure, and information in the financial work papers relating to the contract would be used by competitors and customers to the detriment of the Postal Service.

Hypothetical: A competing package delivery service or its representative obtains a copy of the unredacted version of the financial work papers. It analyzes the work papers to determine what the Postal Service would have to charge its customers in order to meet its minimum statutory obligations for cost coverage and contribution to institutional costs. It then sets its own rates for products similar to what the Postal Service offers its customers under that threshold and markets its ability to guarantee to beat the Postal Service on price for similar delivery services.

Hypothetical: Competitors constantly monitor "cost to serve" scenarios to combine and alter facilities to lower costs. A competitor could add satellite pickup stations closer to the Postal Service's customer in order to underbid the Postal Service's prices.

Identified harm: Public disclosure of the prices and related terms would provide potential customers extraordinary negotiating power.

Hypothetical: Customer B obtains the contract showing Customer A's negotiated prices and the underlying workpapers. Customer B can determine that there is additional profit margin between the prices provided to Customer A and the statutory cost coverage that the Postal Service must produce in order for the agreement to be added to the competitive products list. Although Customer B was offered prices identical to Customer A's, Customer B uses the publicly available information to insist that it unless the Postal Service offers it even lower prices than Customer A's, it will not use the Postal Service but will give its business to a competitor of the Postal Service.

Alternatively, Customer B attempts to negotiate lower rates only for those destinations for which it believes the Postal Service is the low-cost provider among all service providers. The Postal Service may agree to this demand in order to keep the customer's business overall, which it believes will still satisfy total cost coverage for the agreement. Then, Customer B uses other providers for destinations other than those for which it negotiated lower rates. This impacts the Postal Service's overall projected cost coverage for the agreement. Although the Postal Service can terminate the contract when it sees that the mailer's practice and projected profile are at variance, the costs associated with establishing the contract, including filing it with the Postal Regulatory Commission, would be sunk costs that would have a negative impact on postal finances.

Harm: Public disclosure of information in the financial work papers would be used by the customer's competitors to its detriment.

Hypothetical: A business in competition with the customer obtains a copy of the unredacted version of the financial work papers. The customer's competitor analyzes the work papers to assess the customer's underlying shipping costs. The customer's competitor uses that information as a baseline to negotiate with shipping companies and other suppliers to develop lower-cost alternatives and thereby to undercut the customer.

(6) The extent of the protection from public disclosure alleged to be necessary.

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the market for domestic parcel shipping products, as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for such products should not be provided access to the non-public materials.

(7) The length of time for which non-public treatment is alleged to be necessary with justification thereof.

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless otherwise provided by the Commission. 39 C.F.R. § 3007.401(a). However, because the Postal Service's relationships with customers often continue beyond ten years, the Postal Service intends to oppose requests for disclosure of these materials pursuant to 39 C.F.R. § 3007.401(b-c).

(8) Any other relevant factors or reasons to support the application.

None.